

CITY OF BURIEN, WASHINGTON
ORDINANCE NO. 534

**AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON,
RELATING TO SURFACE WATER MANAGEMENT; AMENDING
CHAPTER 13.10 OF THE BURIEN MUNICIPAL CODE TO CONFORM
TO THE NATIONAL POLLUTION DISCHARGE ELIMINATION
SYSTEM PERMIT FOR PHASE II COMMUNITIES; AMENDING THE
ENFORCEMENT AND PENALTY PROVISIONS THEREOF;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN
EFFECTIVE DATE**

WHEREAS, the City has adopted certain provisions codified at Chapter 13.10 of the Burien Municipal Code (“BMC”) that provide for a surface water management program within the City of Burien; and

WHEREAS, in January of 2007, the State Department of Ecology issued the first National Pollution Discharge Elimination System (“NPDES”) permit for Phase II communities in Western Washington which permit is intended to implement the Clean Water Act; and

WHEREAS, although the City already has certain regulations in place that comply with many of the requirements of the Phase II NPDES permit, certain amendments, such as the adoption of best management practices set forth in the King County Pollutions Prevention Manual, are necessary in order to ensure that the City is in compliance with provisions of the permit that must be implemented by the City in August of this year; and

WHEREAS, the proposed amendments to Chapter 13.10 of the BMC are consistent in scope and subject matter with the surface water management programs of other jurisdictions; and

WHEREAS, this Ordinance is enacted as an exercise of the authority of the City of Burien to protect and preserve the public health and welfare;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repeal and Adoption of New Section 13.10.010 BMC (Definitions). Section 13.10.010 of the Burien Municipal Code is hereby repealed in its entirety and a new Section 13.10.010 of the Burien Municipal Code is adopted to read as follows:

13.10.010 Definitions.

The definitions in this section shall apply in the interpretation and enforcement of this chapter unless the context clearly requires otherwise.

(1) AKART – All Known, Available, and Reasonable methods of prevention, control, and Treatment. *See also* the State Water Pollution Control Act, sections 90.48.010 RCW and 90.48.520 RCW.

(2) “Adjustment” means a Department-approved variation in the application of the requirements of BMC 13.10.140 and the Surface Water Design Manual to a particular project in accordance with BMC 13.10.140(3). “Adjustment” replaces “variance,” which was used in prior editions of the Surface Water Design Manual.

(3) “Applicant” means a property owner or a public agency or public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such an easement under RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval.

(4) “Basin” means a geographic area that contains and drains to Miller Creek, Salmon Creek, or Walker Creek, or a geographic area that drains to Lake Burien or Puget Sound.

(5) “Basin plan” means a plan and all implementing regulations and procedures including, but not limited to, capital projects, public education activities and land use management adopted by ordinance for managing surface and storm water within the basin or within individual sub-basins.

(6) “Best management practices (BMPs)” mean schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and structural or managerial practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(7) “City” means City of Burien.

(8) “Clean Water Act” means 33 U.S.C. 1251 et. seq., as amended.

(9) “Closed depression” means an area greater than 5,000 square feet at an overflow elevation that is low-lying and that has no or such a limited surface water outlet that the area acts as a surface water retention facility.

(10) “Construct or modify” means to install a new drainage pipe or ditch or make improvements to an existing drainage pipe or ditch, for purposes other than maintenance, that either serves to concentrate previously unconcentrated surface and storm water run-off or serves to increase, decrease or redirect the conveyance of surface and storm water run-off. “Construct or modify” does not include installation or maintenance of a driveway culvert installed as part of a single-family residential building permit.

(11) “Conveyance system” means the drainage facilities and features, both natural and constructed, that collect, contain and provide for the flow of storm and surface water from the highest points on the land down to a receiving area. The natural elements of the conveyance system include swales and small drainage courses, streams, rivers, lakes and wetlands. The constructed elements of the conveyance system include gutters, ditches, pipes, channels and most flow control and water quality treatment facilities.

(12) “Department” means the Department of Public Works.

(13) “Developed parcel” means any parcel altered from the natural state by the construction, creation or addition of impervious surfaces.

(14) “Development” means any activity that requires a permit or approval, including, but not limited to, a building permit, grading permit, shoreline substantial development permit, conditional use permit, special use permit, zoning variance, subdivision, short subdivision, urban planned development, binding site plan, development permit or right-of-way use permit.

(15) “Director” means the Director of Public Works, or any duly authorized representative of the Director.

(16) “Discharge” means to throw, drain, release, dump, spill, empty, emit, or pour forth any matter or to cause or allow matter to flow, run or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted or poured into water.

(17) “Drainage” means the collection, conveyance, containment or discharge, or any combination thereof, of surface and storm water run-off.

(18) “Drainage facility” or “Stormwater facility” means a constructed or engineered feature that collects, conveys, stores or treats storm and surface water run-off. “Drainage facility” includes, but is not limited to, a constructed or engineered stream, pipeline, channel, ditch, gutter, lake, wetland, closed depression, flow control or water quality treatment facility, erosion and sediment control facility and other structures and appurtenances that provides for drainage.

(19) “Drainage review” means an evaluation by City staff of a proposed project’s compliance with the drainage requirements in the Surface Water Design Manual and with all other applicable drainage requirements.

(20) “Effective impervious area” means the portion of actual impervious area that is connected, or has the effect of being connected as defined in the King County Surface Water Design Manual, directly to the surface water drainage system via surface flow or discrete conveyances such as pipes, gutters or ditches.

(21) “Erosion and sediment control” means any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment-laden water does not leave the site or enter into wetlands or aquatic areas.

(22) “Financial guarantee” means a form of financial security posted to do one or more of the following: ensure timely and proper completion of improvements; ensure compliance with the Burien Municipal Code; or provide secured warranty of materials, workmanship of improvements and design. “Financial guarantees” include assignments of funds, cash deposits, surety bonds or other forms of financial security acceptable to the Director. “Performance guarantee,” “maintenance guarantee” and “defect guarantee” are considered sub categories of “financial guarantee.”

(23) “Flood hazard reduction plan” means a plan and all implementing programs, regulations and procedures including, but not limited to, capital projects, public education activities and enforcement programs for reduction of flood hazards and prepared by King County in accordance with RCW 86.12.200.

(24) “Flow control best management practice” means a method or design for dispersing, infiltrating or otherwise reducing or preventing development-related increases in surface and storm water run-off at, or near, the sources of those

increases. “Flow control best management practice” includes the methods and designs specified in the Surface Water Design Manual.

(25) “Flow control facility” means a drainage facility designed to mitigate the impacts of increased surface and storm water run-off generated by site development in accordance with the drainage requirements in this chapter. A “flow control facility” is designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration or infiltration into the ground, or to hold run-off for a short period of time and then release it to the conveyance system.

(26) “High-use site” means a commercial, industrial or road intersection site that generates a higher than average number of vehicle turnovers or has other characteristics that generate the potential for chronic oil accumulation. “High use site” includes:

- (a) A commercial or industrial site subject to:
 - (i) An expected daily traffic count greater than 100 vehicles per 1,000 square feet of gross building area;
 - (ii) Petroleum storage or transfer in excess of 1,000 gallons per year, not including routine fuel oil storage or transfer; or
 - (iii) Use, storage or maintenance of a fleet of 25 or more diesel vehicles each weighing over ten tons; or
- (b) A road intersection with average daily traffic counts of 25,000 vehicles or more on the main roadway and 15,000 or more vehicles on any intersecting roadway, excluding pedestrian or bicycle use improvement projects.

(27) “Historic site conditions” means those that existed on the site prior to any development in the Puget Sound region. For lands not currently submerged (i.e., outside the ordinary high water mark of a lake, wetland, or stream), historic site conditions shall be assumed to be forest cover unless reasonable, historic, site-specific information is provided to demonstrate a different vegetation cover.

(28) “Hydraulically connected” means connected through surface flow or water features such as wetlands or lakes.

(29) “Illicit discharge” means any direct or indirect non-stormwater discharge to the city’s storm drain system, except as expressly allowed by this chapter.

(30) “Illicit connection” means any man-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar types of connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

(31) “Impervious surface” means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions before development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas that are paved, graveled or made of packed or oiled earthen materials, or other surfaces that similarly impede the natural infiltration of surface and storm water. An open

uncovered flow control or water quality treatment facility is not an “impervious surface”.

(32) “Improvement” means a permanent, human-made, physical change to land or real property including, but not limited to, buildings, streets, driveways, sidewalks, crosswalks, parking lots, water mains, sanitary and storm sewers, drainage facilities and landscaping.

(33) “Lake management plan” means a plan describing the lake management recommendations and requirements adopted by public rule for managing water quality within individual lake basins.

(34) “Land disturbing activity” means an activity that results in a change in the existing soil cover, both vegetative and nonvegetative, or to the existing soil topography. “Land disturbing activity” includes, but is not limited to, demolition, construction, clearing, grading, filling, excavation and compaction. “Land disturbing activity” does not include tilling conducted as part of agricultural practices, landscape maintenance or gardening.

(35) “Land use code” means restrictions on the type of development for a specific parcel of land as identified by records maintained by the King County department of assessments as modified or supplemented by information resulting from investigation by the division. Land use codes are preliminary indicators of the extent of impervious surface and are used in the initial analysis to assign an appropriate rate category for a specific parcel.

(36) “Licensed civil engineer” means a person registered with the State of Washington as a professional engineer in civil engineering.

(37) “Maintenance” means those usual activities taken to prevent a decline, lapse, or cessation in the use of currently serviceable structures, facilities (including without limitation drainage facilities), equipment, or systems, if there is no expansion of the structure, facilities, equipment, or system and there are no significant hydrologic impacts. “Maintenance” includes the repair or replacement of nonfunctional facilities or the replacement of existing structures with different types of structures, if the repair or replacement is required by one or more environmental permits or to meet current engineering standards, and the functioning characteristics of the original facility or structure are not changed.

(38) “Master drainage plan” means a comprehensive drainage control plan intended to prevent significant adverse impacts to the natural and constructed drainage system, both on- and off-site.

(39) “Native vegetated surface” means a surface in which the soil conditions, ground cover and species of vegetation are like those of the original native condition for the site, as more specifically set forth in the Surface Water Design Manual.

(40) “Natural discharge location” means the location where run-off leaves the project site under existing site conditions as defined in the Surface Water Design Manual.

(41) “Natural surface water drainage system” means such landscape features as rivers, streams, lakes and wetlands. This system circulates water in a complex hydrological cycle.

(42) “New impervious surface” means the creation of a hard or compacted surface such as a roof, pavement, gravel or dirt or the addition of a more compacted surface such as the paving of existing dirt or gravel.

(43) “New pervious surface” means the conversion of a native vegetated surface or other native surface to a nonnative pervious surface, including, but not limited to, pasture land, grassland, cultivated land, lawn, landscaping or bare soil, or any alteration of existing nonnative pervious surface that results in increased surface and storm water run-off as defined in the Surface Water Design Manual.

(44) “Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.

(45) “National Pollutant Discharge Elimination System” or “NPDES” means the national program for controlling pollutants from point source discharges directly into waters of the United States under the Clean Water Act.

(46) “Open space” means any parcel, property or portion thereof classified for current use taxation under, or for which the development rights have been sold to, the City of Burien or King County. This definition includes lands which have been classified as open space, agricultural or timber lands under criteria contained in the appropriate City or County code, or Chapter 84.34 RCW.

(47) “Parcel” means the smallest separately segregated unit or plot of land having an identified owner, the boundaries and surface area of which is documented for property tax purposes and given a tax lot number by the King County assessor.

(48) “Person” means any individual, firm, company, association, corporation or governmental agency.

(49) “Pollution-generating impervious surface” means an impervious surface considered to be a significant source of pollutants in surface and storm water run-off. “Pollution-generating impervious surface” includes those surfaces subject to vehicular use or storage of erodible or leachable materials, wastes or chemicals, and that receive direct rainfall or the run-on or blow-in of rainfall. A covered parking area would be included if run-off from uphill could regularly run through it or if rainfall could regularly blow in and wet the pavement surface. Metal roofs are also considered pollution-generating impervious surface unless they are treated to prevent leaching.

(50) “Pollution-generating pervious surface” means a nonimpervious surface considered to be a significant source of pollutants in surface and storm water run-off. “Pollution-generating pervious surfaces” include surfaces subject to the use of pesticides and fertilizers, to the use or storage of erodible or leachable materials, wastes or chemicals, or to the loss of soil. “Pollution-generating pervious surface” includes, but is not limited to, the lawn and landscaped areas of a residential or commercial site, golf course, park sports field, and standard grassed modular grid pavement.

(51) “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(52) “Program” means the surface water management program as set forth in this chapter.

(53) “Project” means any proposed action to alter or develop a site that may also require drainage review.

(54) “Project site” means the portion of a site and any off-site areas subject to proposed project activities, alterations and improvements, including those required by this chapter.

(55) “Rate category” means the classification in this chapter given to a parcel in the service area based upon the type of land use on the parcel and the percentage of impervious surface area contained on the parcel.

(56) “Redevelopment project” means a project that proposes to add, replace or modify impervious surface for purposes other than a residential subdivision or maintenance on a site that:

- (a) Is already substantially developed in a manner that is consistent with its current zoning or with a legal nonconforming use; or
- (b) Has an existing impervious surface coverage of 35 percent or more.

(57) “Replaced impervious surface” means an existing impervious surface proposed to be removed and reestablished as an impervious surface, excluding impervious surface removed for the sole purpose of installing utilities or performing maintenance. For purposes of this definition, “removed” includes the removal of buildings down to bare soil or the removal of Portland cement concrete slabs or pavement, or asphaltic concrete pavement together with any asphalt-treated base.

(58) “Residence” means a building or structure or portion thereof, designed for and used to provide a place of abode for human beings. The term “residence” includes the term “residential” or “residential unit” as referring to the type of or intended use of a building or structure.

(59) “Residential parcel” means any parcel which contains no more than three residences or three residential units which are within a single structure and is used primarily for residential purposes.

(60) “Run-off” means that portion of water originating from rainfall and other precipitation that flows over the surface or just below the surface from where it fell and is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands and shallow groundwater as well as on ground surfaces. For the purpose of this definition, groundwater means all waters that exist beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

(61) “Salmon conservation plan” means a plan and all implementing regulations and procedures including, but not limited to, land use management adopted by ordinance, capital projects, public education activities and enforcement programs for conservation and recovery of salmon within a water resource inventory area designated by the state under WAC 173-500-040.

(62) “Service area” means the incorporated areas of the City of Burien.

(63) “Shared facility” means a drainage facility designed to meet one or more of the requirements of BMC 13.10.140 for two or more separate projects

contained within a basin. Shared facilities usually include shared financial commitments for those drainage facilities.

(64) “Single family residential project” means any project that (a) constructs or modifies a single family dwelling unit, (b) makes improvements (e.g., driveways, roads, outbuildings, play courts, etc.) or clears native vegetation on a lot that contains or will contain a single family dwelling unit, or (c) is a plat, short plat, or boundary line adjustment that creates or adjusts lots that will contain single family dwelling units.

(65) “Site” means a single parcel, or two or more contiguous parcels that are under common ownership or documented legal control, used as a single parcel for a proposed project for purposes of applying for authority from the city to carry out a proposed project. For projects located primarily within dedicated rights-of-way, “site” includes the entire width of right-of-way subject to improvements proposed by the project.

(66) “Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

(67) “Stormwater Pollution Prevention Manual” means the manual, and supporting documentation referenced or incorporated in the manual, describing best management practices and procedures for existing facilities and existing and new activities not covered by the Surface Water Design Manual.

(68) “Surface water compliance plan” means a plan or study and all regulations and procedures that have been adopted by the city or King County to implement the plan or study, including, but not limited to, capital projects, public education activities and enforcement programs for managing surface water quantity and quality discharged from the city’s municipal separate storm sewer system in compliance with the National Pollutant Discharge Elimination System permit program under the Clean Water Act.

(69) “Sub-basin” means a geographic area that:

- a. Drains to a stream or water body named and noted on common maps; and
- b. Is contained within the basin of the stream or water body.

(70) “Surface and storm water” means water originating from rainfall and other precipitation that is found on ground surfaces and in drainage facilities, rivers, streams, springs, seeps, ponds, lakes, wetlands, and shallow ground water.

(71) “Surface and storm water management services” means the services provided by the Department, including but not limited to basin planning, facilities maintenance, regulation, financial administration, public involvement, drainage investigation and enforcement, aquatic resource restoration, surface and storm water quality and environmental monitoring, natural surface water drainage system planning, intergovernmental relations and facility design and construction.

(72) “Surface and storm water management system” means constructed drainage facilities and any natural surface water drainage features that do any

combination of collection, storing, controlling, treating or conveying surface and storm water.

(73) “Surface Water Design Manual” means the manual, and supporting documentation referenced or incorporated in the manual, describing surface and storm water design and analysis requirements, procedures and guidance, and that has been formally adopted by reference in this chapter.

(74) “Undeveloped parcel” means any parcel which has not been altered from its natural state by the construction, creation or addition of impervious surface.

(75) “Water quality treatment facility” means a drainage facility designed to reduce pollutants once they are already contained in surface and storm water run-off. Water quality treatment facilities are the structural component of best management practices. When used singly or in combination, water quality treatment facilities reduce the potential for contamination of either surface or ground waters, or both.

Section 2. Amendment of Section 13.10.020 BMC (Surface Water Manuals Adopted and Amended). Burien Municipal Code Section 13.10.020 is hereby amended to read as follows:

13.10.020 Surface Water Manuals adopted and amended.

The 2009 King County Surface Water Design Manual (“KCSWDM”) and the 2009 King County Stormwater Pollution Prevention Manual (“KCSPPM”) are hereby adopted by reference as, respectively, the City of Burien Surface Water Design Manual (“SWDM”) and the City of Burien Stormwater Pollution Prevention Manual (“SPPM”), with the following modifications:

Chapter 1, Paragraph 1.1.1 is hereby amended to read as follows:

1.1.1 WHEN IS DRAINAGE REVIEW REQUIRED?

All development, redevelopment or new impervious surface regardless of size, scope and nature that is subject to a City of Burien permit or approval shall be subject to, at a minimum, a small site drainage review by the City in accordance with the provisions of this manual. Targeted, full or large site drainage review may be required based on specific project and site characteristics as described in Section 1.1.2.

If any provisions of the Surface Water Design Manual or the Stormwater Pollution Prevention Manual as adopted conflict with any provisions of this chapter, the provisions of this chapter will control. Unless the context indicates otherwise, all references to “King County” or “County” in the SWDM and the SPPM shall mean and refer to the City of Burien; references to the King County Department of Development and Environmental Services or its acronym “DDES” shall mean and refer to the City of Burien Department of Public Works and those agencies contracting with the City of Burien to enforce Chapter 13.10 of the Burien Municipal Code; references to the Water and Land Resources Division of the King County Department of Natural Resources or its acronym “WLR” shall

mean and refer to the City of Burien Department of Public Works; references to the King County Department of Natural Resources and Parks or its acronym (“DNRP”) shall mean and refer to the City of Burien Department of Public Works; all references to Chapter 9.04 of the King County Code or any specific sections thereof shall mean and refer to Chapter 13.10 of the Burien Municipal Code and the equivalent sections thereof.

Terms and standards that are defined in the SWDM and SPPM by reference to Chapter 21A of the King County Code, shall mean and refer to those terms and standards as defined in Title 19 of the Burien Municipal Code; provided that, when such terms have no defined meaning in Title 19 of the Burien Municipal Code, the City adopts and incorporates by reference as part of this Chapter, the definitions set forth in applicable administrative rules or regulations adopted by the Public Works Director or as otherwise determined by the Public Works Director.

All references in the SWDM to the Storm Water Pollution Prevention Manual shall mean and refer to the SPPM as adopted by the City of Burien pursuant to this Chapter 13.10 of the Burien Municipal Code.

All references in the SPPM to the Storm Water Design Manual shall mean and refer to the SWDM as adopted by the City of Burien pursuant to this Chapter 13.10 of the Burien Municipal Code.

The definition of Critical Drainage Area in Chapter 1 of the SWDM is amended by striking “by administrative rule under the procedures specified in KCC 2.98”.

The reference in Section 1.1.2.4 of the SWDM to Urban Planned Development shall mean and refer to the equivalent such designation under the City of Burien Comprehensive Plan as determined by the City of Burien Community Development Director.

The note following the third sentence of Section 1.1.3 of the SWDM is stricken.

The last paragraph of Section 1.1.4 beginning with “Additional mitigation” is stricken.

The reference in Section 1.2.2 at paragraph 2 of the SWDM to KCC 21A.24.110 shall mean and refer to the applicable provision of Title 19 of the Burien Municipal Code.

All references to Critical Area Review in the SWDM and the SPPM shall mean and refer to Critical Area Review pursuant to Title 19 of the Burien Municipal Code.

References in the SWDM and SWWP to Chapter 16.82 of the King County Code, shall mean and refer to the clearing and grading provisions of the Burien Municipal Code.

Subsection F of section 1.2.4.3 of the SWDM is omitted.

The reference in Section 1.2.7 to King County Ordinance 12020 shall mean and refer to the financial guarantee requirements of the applicable provisions of the Burien Municipal Code.

Section 1.4.4 of the SWDM is stricken and replaced with the following:

All variances (“Adjustments”) from Chapter 13.10 BMC, the SWDM and the SWWP shall be governed by the procedures, standards and requirements set forth at Section 19.65.085 of the Burien Municipal Code, as it now exists or may hereafter be amended. Consistent with these requirements, the general steps of the variance review process for specific types of adjustments are presented as follows:

The reference in Section 1.4.5 of the SWDM to KCC 20.20 shall mean and refer to Section 19.65.085 BMC.

References to offices of King County shall mean and refer to the equivalent offices of the City of Burien.

Except when the context indicates otherwise, references in the SWDM and the SPPM to specific codes or sections of codes of King County, such as the King County critical areas code, shoreline management code, clearing and grading code, and road standards, shall mean and refer to the equivalent codes or sections of codes of the City of Burien.

Section 3. Amendment of Section 13.10.030 BMC (Administration). Section 13.10.030 of the Burien Municipal Code is hereby amended to read as follows:

13.10.030 Administration.

(1) Administration.

- (a) The Director is authorized to promulgate and adopt administrative rules for the purpose of implementing and enforcing the provisions of this chapter. Adopted administrative rules will be made available to the public from the Department. This includes, but is not limited to, the Surface Water Design Manual and the Stormwater Pollution Prevention Manual.
- (b) The Director is authorized to develop procedures for applying adopted rules and regulations during the review of permit applications for the development of land. These procedures may also be contained in the

Surface Water Design Manual and the Stormwater Pollution Prevention Manual.

(2) Inspections. The Director is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.

(3) Right of entry. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, monitor for proper function of drainage facilities, or whenever the Director has reasonable cause to believe that violations of this chapter are present or operating on a subject property or portion thereof, the Director may enter such premises at all reasonable times to inspect the same or perform any duty imposed upon the Director by this chapter; provided that, if such premises or portion thereof is occupied, the Director shall first make a reasonable effort to locate the owner or other person having charge or control of the premises or portion thereof and demand entry.

(4) Access. Proper ingress and egress shall be provided to the Director to inspect, monitor or perform any duty imposed upon the Director by this chapter. The Director shall notify the responsible party in writing of failure to comply with this access requirement. If the Director does not receive a response from the responsible party within seven days of receipt of the written notification, the Director may order the work required completed or otherwise address the cause of improper access. The obligation for the payment of all costs that may be incurred or expended by the City in causing such work to be done shall thereby be imposed on the person holding title to the subject property.

Section 4. Amendment of Section 13.10.110 BMC (Scope). Section 13.10.110 of the Burien Municipal Code is hereby amended to read as follows:

13.10.110 Scope.

Compliance with the standards in this chapter, the Surface Water Design Manual, and the Stormwater Pollution Prevention Manual does not necessarily mitigate all probable and significant environmental impacts to aquatic biota. Fishery resources and other living components of aquatic systems are affected by a complex set of factors. While employing a specific flow control standard may prevent stream channel erosion or instability, other factors affecting fish and other biotic resources (such as increases in stream flow velocities) are not directly addressed by the Surface Water Design Manual and the Stormwater Pollution Prevention Manual. Thus, compliance with these manuals should not be construed as mitigating all probable and significant surface water impacts, and additional mitigation may be required to protect aquatic biota in streams and wetlands.

Section 5. Amendment of Section 13.10.130 BMC (Drainage Review - When Required - Type). Section 13.10.130 of the Burien Municipal Code is hereby amended to read as follows:

13.10.130 Drainage review - when required - type.

(1) All development, including all redevelopment or new impervious surface regardless of size, scope and nature, that is subject to a City of Burien permit or

approval, shall be subject to, at a minimum, a small project drainage review. Targeted, full or large site drainage review may be required based on specific project and site characteristics as described in subsection 2, below.

(2) Targeted, full or large drainage review is required for any proposed development which meets any one or more of the following conditions:

- (a) Would result in 2,000 square feet or more of new impervious surface, replaced impervious surface, or new plus replaced impervious surface;
- (b) Would involve 7,000 square feet or more of land disturbing activity;
- (c) Would construct or modify a drainage pipe or ditch that is 12 inches or more in size or depth or receives surface and storm water run-off from a drainage pipe or ditch that is 12 inches or more in size or depth;
- (d) Would involve connection of a private surface and storm water management system or drainage facility to a surface and storm water management system or drainage facility owned or controlled by the City of Burien;
- (e) Contains or is adjacent to a flood hazard area as defined in BMC 19.10.179.2;
- (f) Is located within a critical drainage area;
- (g) Is a redevelopment project proposing \$100,000.00 or more of improvements to an existing site; or
- (h) Is a redevelopment project on a site in which the total of new plus replaced impervious surface is 5,000 square feet or more and whose valuation of proposed improvements, including interior improvements and excluding required mitigation and frontage improvements, exceeds 50 percent of the assessed value of the existing site improvements.

(3) The drainage review for any proposed project shall be scaled to the scope of the project's size, type of development, and potential for impacts to the regional surface water system to facilitate preparation and review of project applications. If the drainage review for a proposed project is required, the Department shall determine which of the following drainage review types apply as specified in the Surface Water Design Manual:

- (a) Small project drainage review;
- (b) Targeted drainage review;
- (c) Full drainage review; or
- (d) Large project drainage review.

Section 6. Amendment of Section 13.10.140 BMC (Drainage Review - Requirements).

Section 13.10.140 of the Burien Municipal Code is hereby amended to read as follows:

13.10.140 Drainage review - requirements.

(1) Every application for a permit or approval that is subject to drainage review must meet each of the core requirements set forth in the Surface Water Design Manual for the type of drainage review that is required.

(2) The Surface Water Design Manual defines three flow control levels for impact mitigation. The city applies the Level Two standard as the default standard within the entire city. The city may require Level Three flow control for

specific areas in accordance with the provisions set forth in Section 1.2.3 of the SWDM. The flow control levels may be reduced or waived for specific areas (e.g., Salmon Creek Basin) where a plan or study approved by the Department of Ecology shows that a lower standard (e.g., Level 1 flow control) is sufficient or no facility is necessary. Level 1 and Level 3 flow control levels designated by King County pursuant to the King County Basin Plan, and approved by the Department of Ecology, that apply to specific areas that have been, after such designation, annexed to the city, shall apply to those specific areas until such time as the city, by and through the Public Works Director, adopts a different flow control level.

(3) A proposed project required to have drainage review shall meet the special requirements applicable to the site pursuant to the Surface Water Design Manual. The Department shall verify if a proposed project is subject to and must meet any of the special requirements set forth in the Surface Water Design Manual.

(4) (a) An adjustment to the requirements contained in this section or other requirements in the Surface Water Design Manual may be proposed. The resulting development shall be subject to all of the remaining terms and conditions of this chapter and the adjustment shall:

- (i) Produce a compensating or comparable result in the public interest; and
 - (ii) Meet this chapter's objectives of safety, function, appearance, environmental protection and maintainability based upon sound engineering judgment.
- (b) If complying with subsection (4)(a)(i) of this section will deny all reasonable use of a property, the best practicable alternative shall be obtained as determined by the Director according to the adjustment process defined in the Surface Water Design Manual.
- (c) Requests for adjustments that may conflict with the requirements of any other City department shall require review and concurrence with that department.
- (d) A request for an adjustment shall be processed in accordance with the procedures specified in the Surface Water Design Manual.
- (e) The city may require monitoring of experimental designs and technology or untested applications proposed by the applicant in order to determine compliance with subsection (4)(a) of this section and the approved plans and conditions.
- (f) The applicant may appeal an adjustment decision to the Hearing Examiner by following the appeal procedures as specified in Chapter 2.20 BMC.

(5) Applications of Low Impact Development ("LID") techniques as a flow control or water quality control design are encouraged where the LID techniques are feasible. LID techniques may be granted as an Adjustment by the Director; provided that, the applicant establishes that the proposed LID techniques will meet or exceed the standards set forth in the Clean Water Act, the current Phase II Western Washington NPDES permit applicable to the City of Burien, and this Title, including the SWDM and the SPPM. The city may allow the Western

Washington Hydrology Model (“WWHM”), MGS Flood Model, System for Urban Stormwater Treatment and Analysis Integration (“SUSTAIN”) Model or other hydrologic/hydraulic models that have been approved by the City, King County, DOE, the Washington State Department of Transportation, or the Environmental Protection Agency to be used as a tool for determining flow control or water quality requirements. The drainage review requirements in this section and in the Surface Water Design Manual may be modified or waived by the Director if the Director determines that such modification or waiver is in the best interests of the public and will comply with the current Phase II Western Washington NPDES permit applicable to the City of Burien and other applicable laws.

(6) “Existing site conditions” or “historic site conditions” means those that existed on the site prior to any development in the Puget Sound region. For lands not currently submerged (i.e., outside the ordinary high water mark of a lake, wetland, or stream), existing site conditions shall be assumed to be forest cover unless reasonable, historic, site-specific information, which is approved by DOE, is provided to demonstrate a different vegetation cover.

Section 7. Amendment of Section 13.10.240 BMC (Illicit discharges and connections).

Section 13.10.240 of the Burien Municipal Code is hereby amended to read as follows:

13.10.240 Illicit discharges and connections.

(1) Prohibited Discharges. It is unlawful for any person to discharge any contaminants into surface and storm water or ground water. Contaminants include, but are not limited, to the following:

- (a) Trash or debris;
- (b) Construction materials;
- (c) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, and heating oil;
- (d) Antifreeze and other automotive products;
- (e) Metals in either particulate or dissolved form;
- (f) Flammable or explosive materials;
- (g) Radioactive material;
- (h) Batteries;
- (i) Acids, alkalis, or bases;
- (j) Paints, stains, resins, lacquers or varnishes;
- (k) Degreasers and solvents;
- (l) Drain cleaners;
- (m) Pesticides, herbicides or fertilizers;
- (n) Steam cleaning wastes;
- (o) Soaps, detergents or ammonia;
- (p) Swimming pool backwash;
- (q) Chlorine, bromine and other disinfectants;
- (r) Heated water;
- (s) Domestic animal wastes;
- (t) Sewage;
- (u) Recreational vehicle waste;

- (v) Animal carcasses;
 - (w) Food wastes;
 - (x) Bark and other fibrous materials;
 - (y) Collected lawn clippings, leaves, or branches;
 - (z) Silt, sediment, or gravel;
 - (aa) Dyes, except as stated in subsection (3)(a) of this section;
 - (bb) Chemicals not normally found in uncontaminated water; or
 - (cc) Any hazardous material or waste, not listed above.
- (2) Allowable Discharges. Certain discharges may be made directly or indirectly to a public drainage control system. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the Director determines that the type of discharge, whether singly or in combination with other discharges, is causing significant contamination of surface water or ground water:
- (a) Spring water;
 - (b) Diverted stream flows;
 - (c) Uncontaminated water from crawl space pumps, foundation drains or footing drains;
 - (d) Lawn watering with potable water or collected rainwater;
 - (e) Pumped groundwater flows that are uncontaminated;
 - (f) Materials placed as part of an approved habitat restoration or bank stabilization project;
 - (g) Natural uncontaminated surface water or ground water;
 - (h) Flows from riparian habitats and wetlands;
 - (i) The following discharges from boats: engine exhaust; cooling waters; effluent from sinks; showers and laundry facilities; and treated sewage from Type I and Type II marine sanitation devices;
 - (j) Collected rainwater that is uncontaminated;
 - (k) Uncontaminated groundwater that seeps into or otherwise enters stormwater conveyance systems;
 - (l) Air conditioning condensation;
 - (m) Irrigation water from agricultural sources that is commingled with 550 stormwater runoff; and
 - (n) Other types of discharges as determined by the Director.
- (3) Exceptions.
- (a) Dye testing is allowable but requires verbal notification to the City of Burien Public Works Department at least one day prior to the date of test.
 - (b) A person does not violate subsection (1) of this section if that person has properly designed, constructed, implemented and is maintaining BMPs and is carrying out AKART as required by this chapter, but contaminants continue to enter surface and storm water or ground water; or that person can demonstrate that there are no additional contaminants being discharged from the site above the background conditions of the water entering the site. A person who, under of this subsection, is not in violation of subsection (1) of this section is liable

for any prohibited discharges through illicit connections, dumping, spills, improper maintenance of BMPs or other discharges that allow contaminants to enter surface and storm water or ground water.

- (c) Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter in order to avoid an imminent threat to public health or safety, shall be exempt from this section. The Director by public rule may specify actions that qualify for this exception in city procedures. A person undertaking emergency response activities shall take steps to ensure that the discharges resulting from such activities are minimized. In addition, this person shall evaluate BMPs and the site plan, where applicable, to restrict recurrence.

Any connection, identified by the Director, that could convey anything not composed entirely of surface and surface water, directly to surface, storm, or ground waters is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges, connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (“NPDES”) permit as issued by the state (other than an NPDES surface water permit) or a state waste discharge permit, and connections conveying effluent from on-site sewage disposal systems to subsurface soils. Presence of prohibited connections as defined herein constitutes a violation of this chapter as set force in BMC Sections 13.10.510 and 13.10.520. Water quality analysis or investigation for potential illicit connection and illicit discharge will be conducted by the city or by the state certified laboratory.

Section 8. Amendment of Section 13.10.250 BMC (Best Management Practices).
Section 13.10.250 of the Burien Municipal Code is hereby amended to read as follows:

13.10.250 Best management practices.

(1) Any person causing or allowing discharge to a public drainage facility, natural drainage system, surface and surface water, or ground water shall control contamination in the discharge by implementing appropriate source control BMPs. Failure to implement such practices shall constitute a violation of this chapter. The Best Management Practices (“BMPs”) shall be applied to any business or residential activity that might result in prohibited discharges as specified in the Stormwater Pollution Prevention Manual or as determined necessary by the Director.

- (a) In applying the Stormwater Pollution Prevention Manual, the Director shall first require the implementation of source control BMPs. If these are not sufficient to prevent contaminants from entering surface and storm water or ground water, the Director may require implementation of treatment BMPs as set forth in AKART. The city will provide, upon reasonable request, available technical assistance materials and information.
- (b) The Director shall use public education and warnings as the primary method of gaining compliance with this chapter and shall not use citations, notice and orders, assessment of civil penalties and fines, or other compliance actions as authorized in BMC Chapter 18.110, unless the Director determines: (1) The discharge from a normal single family residential activity, whether singly or in combination with other discharges, is causing a significant contribution of contaminants to surface and storm water or ground water; or (2) The discharge from a normal single family residential activity poses a hazard to the public health, safety or welfare, endangers any property or adversely affects the safety and operation of city right-of-way, utilities or other city-owned or maintained property.
- (c) Persons implementing BMPs through another federal, state or local program will not be required to implement the BMPs prescribed in the city’s Stormwater Pollution Prevention Manual, unless the Director determines the alternative BMPs are ineffective at reducing the discharge of contaminants. If the other program requires the development of a stormwater pollution prevention plan or other best management practices plan, the person shall make the plan available to the city upon request.

Section 9. Amendment of Section 13.10.260 BMC (Water Quality Standards). Section 13.10.260 of the Burien Municipal Code is hereby amended to read as follows:

13.10.260 Water quality standards.

The City of Burien hereby adopts by reference the water quality standards established under the authority of Chapter 90.48 RCW and contained within Chapter 173-201A WAC as presently written or hereafter amended.

Section 10. Amendment of Section 13.10.270 BMC (Operation and Maintenance of Stormwater Facilities). Section 13.10.270 of the Burien Municipal Code is hereby amended to read as follows:

13.10.270 Operation and maintenance of stormwater facilities.

(1) Standards for maintenance of stormwater facilities existing on public or private property within the City are contained in the Surface Water Design Manual and the Stormwater Pollution Prevention Manual. Any maintenance agreement submitted and approved by the city through the permit process shall supersede maintenance requirements contained in the Surface Water Design Manual and the Stormwater Pollution Prevention Manual.

(2) No person shall cause or permit any drainage facility on any public or private property to be obstructed, filled, graded, or used for disposal of debris. Any such activity constitutes a violation of this chapter.

(3) Any modification of an existing drainage facility must be approved and permitted by the city. Failure to obtain permits and approvals, or to violate conditions thereof for any such alteration, constitutes a violation of this chapter.

(4) The city will maintain all elements of the storm drainage system beginning at the first catch-basin within the public right-of-way, and in easements or tracts dedicated to and accepted by the City.

(5) All private stormwater facilities, including, but not limited to, nonresidential stormwater facilities, roof downspout drains and driveway drains serving single-family residences, shall be maintained by the property owner.

(6) Maintenance of Nonresidential Stormwater Facilities by Owners.

(a) Any person or persons holding title to a nonresidential property for which stormwater facilities have been required by the city shall be responsible for the continual operation, maintenance, and repair of said stormwater facilities in accordance with the criteria set forth in the Surface Water Design Manual the Stormwater Pollution Prevention Manual.

(b) For nonresidential stormwater facilities, failure to meet the maintenance requirements specified in the Surface Water Design Manual and the Stormwater Pollution Prevention Manual constitutes a violation of this chapter, and shall be enforced against the owner(s) of the subject property served by the stormwater facility.

(7) City Acceptance of Existing Residential Stormwater Facilities. The city may accept for maintenance those stormwater facilities serving residential

developments existing prior to the effective date of the ordinance codified in this chapter that meet the following conditions:

- (a) The stormwater facilities serve more than one individual house or property;
 - (b) An inspection by the Director has determined that the stormwater facilities are functioning as designed;
 - (c) The stormwater facilities have had at least two years of satisfactory operation and maintenance, unless otherwise waived by the Director;
 - (d) An inspection by the Director has determined that the stormwater facilities are accessible for maintenance using existing city equipment;
 - (e) The person or persons holding title to the properties served by the stormwater facilities have submitted a petition containing the signatures of the title holders of more than fifty percent of the lots served by the stormwater facilities requesting that the City maintain the stormwater facilities;
 - (f) An easement or dedication of the property is offered by the property owner at no cost;
 - (g) All easements entitling the city to properly access, operate and maintain the subject stormwater facilities have been conveyed to the city and have been recorded with the King County office of records and elections;
 - (h) The person or persons holding title to the properties served by the stormwater facilities show proof of the correction of any defects in the drainage facilities, including provision of maintenance access, as required by the Director; and
 - (i) The city formally accepts said infrastructure for operation and maintenance.
- (8) Disposal of waste from maintenance activities shall be conducted in accordance with the minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC; guidelines published by the Washington State Department of Ecology for disposal of waste materials from stormwater maintenance activities; and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC.

Section 11. Amendment of Section 13.10.340 BMC (Policy). Section 13.10.340 of the Burien Municipal Code is hereby amended to read as follows:

13.10.340 Policy.

(1) It is the finding of the city that developed parcels contribute to an increase in surface and storm water run-off to the surface and storm water management system. This increase in surface and surface water run-off results in the need to establish rates and charges to finance the city's activities in surface and surface water management. Developed parcels shall be subject to the rates and charges of the Program based on their contribution to increased run-off. The factors to be used to determine the degree of increased surface and surface water run-off to the surface and surface water management system from a particular parcel shall be the percentage of impervious surface coverage on the parcel, the total acreage of the parcel and any mitigating factors as determined by the city.

(2) It is the finding of the city that undeveloped parcels do not contribute as much as developed parcels to an increase in surface and storm water run-off into the surface and storm water management system. Undeveloped properties shall be exempt from the rates and charges of the Program.

(3) It is the finding of the city that maintained drainage facilities mitigate the increased run-off contribution of developed parcels by providing on-site drainage control. Parcels served by flow control facilities which were required for development of the parcel or can be demonstrated by the property owner to provide flow control of surface and storm water to the standards in this chapter shall receive a discount as provided in the rates and charges of the Program, if the facility is maintained at the parcel owner's expense to the standard established by the Department.

(4) It is the finding of the city that improvements to the quality of surface water run-off can decrease the impact of that run-off on the environment. Parcels served by water quality treatment facilities that were required for development of the parcel or that can be demonstrated by the property owner to provide treatment of surface and storm water to the standards in this chapter shall receive a discount as provided in the rates and charges of the surface and storm water management program, if the facility is maintained at the parcel owner's expense to the standard established by the Department.

(5) It is a finding of the City that open space properties provide a benefit to the surface and storm water management system by the retention of property in an undeveloped state. Open space properties shall receive a discount from the rates and charges to encourage the retention of property as open space.

(6) The majority of the parcels in the service area are residential. The variance between residential parcels in impervious surface coverage is found to be minor and to reflect only minor differences in increased run-off contributions. The administrative cost of calculating the service charge individually for each residential parcel and maintaining accurate information would be very high. A flat charge for residential parcels is less costly to administer than calculating a separate charge for each parcel and is equitable because of the similarities in impervious surface coverage between residential parcels. Therefore, residential

parcels shall be charged a flat charge based upon an average amount of impervious surface.

(7) Very lightly developed nonresidential parcels which have an impervious surface coverage of 10 percent or less of the total parcel acreage are characterized by a very low intensity of development and generally a large number of acres. A greater number of acres of undeveloped land associated with an impervious surface results in significantly less impact to the surface and storm water management system. These parcels shall be charged a flat rate which will encourage the retention of large areas of very lightly developed land.

(8) Lightly to very heavily developed nonresidential parcels which have an impervious surface coverage of more than 10 percent have a substantial impact on the surface and storm water management system. The impact of these parcels on the surface and storm water management system increases with the size of the parcels. Therefore, lightly to very heavily developed properties shall be charged a rate determined by the percent of impervious surface coverage multiplied by the parcel acreage.

(9) The city roads and State highway programs provide substantial annual programs for the construction and maintenance of drainage facilities, and the roads systems and their associated drainage facilities serve as an integral part of the surface and storm water management system. City and State road drainage systems unlike the drainage systems on other properties are continually being upgraded to increase both conveyance capacity and control. It is envisioned that the roads program will work cooperatively with the surface and storm water management program to improve regional surface and surface water management services, as new information is available from basin plans and other sources. City roads and State highways shall not be charged a rate in recognition of the benefit to the surface and storm water management services provided by the drainage facilities associated with the city roads and State highway programs; provided, that those drainage facilities are constructed, operated, and maintained in accordance with this chapter.

(10) Comprehensive management of surface and storm water run-off must include anticipation of future growth and development in the design and improvement of the surface and storm water management system. Service charge revenue needs shall be based upon the present and future requirements of the surface and storm water management system, and these needs shall be considered when determining the rates and charges of the Program.

(11) Basin plans are essential to establishing a comprehensive approach to a capital improvement program, maintenance of facilities and regulation of new developments. A plan should analyze the measures needed to control surface and storm water run-off which results from existing and anticipated development within the basin. The measures investigated to control run-off should include land use regulation such as setback requirements or community plan revisions which revise land use densities as well as the use of drainage facilities. A plan also should recommend the quantity and water quality run-off control measures required to further the purposes set forth in this chapter, and community goals. The institutional requirements and regulations, including but not limited to land

use management, funding needs, and incentives for preserving the natural surface and storm water drainage system should be identified in the plan. The proposed ordinances and regulations necessary to implement the plan shall be transmitted to the council simultaneously with the plan.

(12) Areas with development related surface and storm water problems require comprehensive management of surface and storm water.

(13) Additional surface and storm water run-off problems may be caused by new land use development if not properly mitigated both through protection of natural systems and through constructed improvements. The Surface Water Design Manual and the Stormwater Pollution Prevention Manual and this chapter have been adopted to mitigate the impact of land use development. Further mitigation of these impacts is based on expertise which continues to evolve as new information on our natural systems is obtained and new techniques are discovered. The Program, through reconnaissance studies, basin plans, and other special studies, will continuously provide valuable information on the existing problems and areas of the natural drainage system that need special protection. The city is researching and developing methods to protect the natural drainage system through zoning, buffering and setbacks to alleviate existing problems. Setback and buffering measures allow natural preservation of wetlands and stream corridors to occur, alleviate erosion and water pollution, and provide a safe environment for the small mammals and fish which inhabit sensitive areas. Based upon the findings in this subsection, and as information and methods become available, the Director, as appropriate shall draft and submit to the Council, regulations and development standards to allow protection of the surface and storm water management system including natural drainage systems.

(14) The Program will maintain long term fiscal viability and fund solvency for all of its related funds. The Program's approach to financial reporting and disclosure will be comprehensive, open and accessible.

(15) The Program shall prepare an annual, multiyear capital improvement program which encompasses all of the Program's activities related to the acquisition, construction, replacement, or renovation of capital facilities or equipment. All proposed new facilities will be subject to a consistent and rigorous needs analysis. The Program's capital facilities will be planned and financed to ensure that the benefits of the facilities and the costs for them are balanced over time.

Section 12. Amendment of Section 13.10.500 BMC (Inspection and Sampling). Section 13.10.500 of the Burien Municipal Code is hereby amended to read as follows:

13.10.500 Inspection and sampling.

(1) Inspections for compliance with the provisions of this chapter shall be allowed as follows:

- (a) Construction and Development Inspection. The Director or designee shall have access to any site for which a permit as listed in Section 13.10.130 has been issued, during regular business hours, for the purpose of review of erosion control practices and stormwater

facilities, and to insure compliance with the terms of such permit. Applicants for any such permit shall agree in writing, as a condition of issuance thereof that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in Section 13.10.500(2).

- (b) Inspection for Cause. Whenever there is cause to believe that a violation of this chapter has been or is being committed, the Director or designee is authorized to inspect the property during regular business hours, and at any other time reasonable given the circumstances. Inspection procedures shall be as outlined in Section 13.10.500(2).
 - (c) Inspection for Maintenance and Source Control Best Management Practices. The Director or designee may inspect stormwater facilities in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this chapter and any maintenance schedule adopted during the plan review process for the property. The Director also may enter the site for the purposes of observing source control best management practices. The property owner or other person in control of the site shall allow any authorized representative of the Director or designee access during regular business hours, or at any other time reasonable in the circumstances, for the purpose of inspection, sampling, and records examination.
 - (d) Drainage Pipeline Video Inspection for New and Re-development. The property owner or the applicant shall conduct video inspection of the newly constructed or modified drainage systems that are equal or larger than an 8 inch diameter pipe. The city may require pipeline video inspection for a pipe smaller than 8 inches. The applicant or property owner shall be responsible for the cost of video inspections.
- (2) Inspection Procedure. Prior to making any inspections, the Director or designee shall present identification credentials, state the reason for the inspection, and request entry of the owner or other person having charge or control of the property, if available, or as provided below.
- (a) If the property or any building or structure on the property is unoccupied, the Director or his designee shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.
 - (b) If, after reasonable effort, the Director or his designee is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the site or of the surface and storm water drainage system creates an imminent hazard to persons or property, the inspector may enter.
- (3) Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:
- (a) Sample Collection. When the Director has reason to believe that a violation exists or is occurring on a property, the Director shall have

the authority to set up on the site such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.

- (b) Sample Analysis. Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the State Department of Ecology as competent to perform the required analysis using standard practices and procedures.
- (c) Cost of Sample Collection and Analysis. If it is determined that a violation of this chapter exists on the site, the owner of the property shall pay the city's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the city will pay such charges.
- (d) Establish a sampling plan. If it is determined that a violation of the chapter exists, the Director may require the property owner or applicant to prepare a Monitoring and Sampling Plan to assure that compliance is occurring. The Monitoring and Sampling Plan shall be approved by the Director prior to implementation.

Section 13. Amendment of Section 13.10.510 BMC (Enforcement - Violations). Section 13.10.510 of the Burien Municipal Code is hereby amended to read as follows:

13.10.510 Enforcement - violations.

The provisions set forth in this section shall apply to all violations of this chapter or the Surface Water Design Manual and the Stormwater Pollution Prevention Manual. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. At the Director of Public Works' discretion, the choice of enforcement option taken and the severity of any monetary penalty shall be based on the nature of the violation, the damage or risk to the public or to public resources, the public resources expended to take enforcement action and ensure compliance with this chapter, and/or the degree of bad faith of the persons subject to the enforcement action. Enforcement options are cumulative and shall not be deemed exclusive.

- (1) Nuisance. Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and a public nuisance, and may be abated using the procedures of Chapters 8.45 and 9.75 of this code as currently written or hereafter amended or as otherwise allowed by law.
- (2) Violation. Any structure, condition, act or failure to act which violates any provision of this chapter shall be, and the same is declared to be, unlawful and is subject to the enforcement and penalty provisions of this Section 13.10.510 BMC and Section 13.10.520 BMC.
- (3) Order To Cease Activity. The Director or designee shall have the authority to order immediate cessation of any activity that is in violation of this chapter whether occurring on public or private property.

- (a) Posting and Notice. The Director or designee shall prominently post this order at the subject location and shall make reasonable attempts to send this order on to the property owner, the person in charge of the property, or the person causing the activity to be conducted or the improvement erected or altered.
 - (b) Effect. When an order to cease activity has been posted on the subject location, it is a violation of this chapter for any person with actual or constructive knowledge of the order to conduct the activity or do the work covered by the order until such time as the Director or designee has removed or authorized removal of the order. If an order to cease activity is violated, the Director or designee may issue a notice of civil infraction under Section 13.10.510(5).
 - (c) Appeal. An order to cease activity may be appealed in like manner as a notice of civil infraction under Section 13.10.510(5). If a notice of civil infraction has also been issued and appealed, the appeals shall be consolidated for hearing.
- (4) Notice of Violation. If the Public Works Director or designee determines that any structure, condition, act or failure to act exists that is in violation of this chapter, he/she may issue a notice of violation. This notice will specifically indicate:
- (a) The name and address of the property owner or other person to whom the notice of violation is directed;
 - (b) The street address or description sufficient for identification of the location where the violation has occurred or is occurring;
 - (c) A description of the violation and a reference to the provision or provisions of this chapter being violated;
 - (d) A statement of the action required to be taken to correct the violation, as determined by the Public Works Director, and a date or time by which correction is to be completed; and
 - (e) A statement that a monetary penalty in an amount per day for each violation as specified by Section 13.10.520 shall be assessed against the person to whom the notice of violation is directed for each and every day, or portion of a day, that the violation continues following the date set for correction.
 - (f) Notice to Property Owner and Responsible Party. The Public Works Director or designee shall:
 - (i) Leave a copy of this notice with the occupant or responsible party or post it in a conspicuous place on the subject property; and
 - (ii) Personally serve or send a copy of the notice by certified mail to the owner of the subject property and/or responsible party.
 - (iii) Extension. Upon written request received prior to the correction date or time, the Public Works Director or designee may extend the date set for correction for good

cause. The Public Works Director or designee may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible by the date established as good cause.

(5) Notice of Civil Infraction.

(a) General. The Public Works Director or designee may cause a notice of civil infraction to be issued in the following circumstances:

- (i) There is a violation of a posted order to cease activity; or
- (ii) If, after the time specified in a notice of violation, the corrections specified in the notice of violation have not been completed, and a violation persists; or
- (iii) There is reasonable cause to believe that there has been a violation of this chapter.

(b) Issuance. The notice of civil infraction will be issued to the owner of the property and/or to the responsible party, if the violation exists on private property, or to the party responsible for the activity or condition if the violation exists on public property.

- (i) Notwithstanding the provisions of Sections 13.10.510(3) and 13.10.510(4), the Public Works Director or designee may issue a notice of civil infraction without having issued an order to cease activity or a notice of violation when a repeated violation occurs within a six-month period of time or otherwise at the Director's or designee's discretion.
- (ii) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless appealed as provided in this chapter.

(c) Content. The following shall be included in the notice of civil infraction.

- (i) The name and address of the property owner or other persons to whom the notice of civil infraction is directed;
- (ii) The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
- (iii) A description of the violation and a reference to that provision or provisions of this chapter which has been violated;
- (iv) A statement that the monetary penalty in the amount per day for each violation as specified in Section 13.10.520 is assessed against the person to whom the notice of civil infraction is directed for each and every day, or portion thereof, during which the violation continues beyond the date or time established for correction in the notice of violation; and

- (v) A statement that the person to whom the notice of civil infraction was directed must complete correction of the violation and may pay the monetary penalty imposed to the city clerk or may appeal the notice of civil infraction as provided in Section 13.10.510(5)(e).
- (d) Service of Notice. The Public Works Director or designee shall serve the notice of civil infraction upon the person to whom it is directed, either personally or by mailing a copy of the notice of civil infraction by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address or by posting the notice of civil infraction conspicuously on the affected property or structure. The person who effected personal service shall make proof of service at the time of service by a written declaration under penalty of perjury declaring the time and date and the manner in which service was made.
- (e) Appeal to Hearing Examiner.
 - (i) A person to whom a notice of civil infraction is directed may appeal the notice of civil infraction, including the determination that a violation exists, or may appeal the amount of any monetary penalty imposed to the Hearing Examiner.
 - (ii) A person may appeal the notice of a civil infraction by filing a written notice of appeal with the Department of Public Works within the earlier of, seven calendar days from the date of personal service of the notice of civil infraction, and if the notice is not personally served, within ten calendar days from the date the notice was deposited in the United States mail, properly addressed and postage prepaid, and if the notice was posted, within ten calendar days from the date the notice was posted on the property.
 - (iii) The monetary penalty for a continuing violation does not accrue during the pendency of the appeal; however, the Hearing Examiner may impose a daily monetary penalty from the date of service of the notice of civil infraction if the Hearing Examiner finds that the appeal is frivolous or intended solely to delay compliance.
 - (iv) The hearing before the Hearing Examiner shall be conducted as follows:
 - i. The office of the Hearing Examiner shall give notice of the hearing before the Hearing Examiner to the appellant seventeen calendar days before such hearing; and
 - ii. The Hearing Examiner shall conduct a hearing on the appeal. The City and the appellant may participate as parties in the hearing and each may call witnesses. The City shall have the burden of proof by a

preponderance of the evidence that a violation has occurred.

- (f) Action of Hearing Examiner.
 - (i) The Hearing Examiner shall determine whether the City has proven by a preponderance of the evidence that a violation has occurred and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the notice of civil infraction with or without written conditions.
 - (ii) The Hearing Examiner shall consider the following in making his/her determination:
 - i. Whether the intent of the appeal was to delay compliance;
 - ii. Whether the appeal is frivolous;
 - iii. Whether there was a written contract or agreement with another party which specified the securing by the other party of the applicable permit or approval from the city;
 - iv. Whether the appellant exercised reasonable and timely effort to comply with applicable development regulations; and
 - v. Any other relevant factors.
 - (g) Notice of Decision. The Hearing Examiner shall mail a copy of his or her decision to the appellant by certified mail, postage prepaid, return receipt requested.
 - (h) Judicial Review. The decision of the Hearing Examiner may be reviewed pursuant to the standards set forth in Chapter 36.70C RCW in King County Superior Court. The land use petition must be filed within twenty-one calendar days of the issuance of the final land use decision by the Hearing Examiner. For more information on the judicial review process for land use decisions, see Chapter 36.70C RCW.
 - (i) Criminal Penalty. Each day for which there occurs or continues to occur a willful violation of an order issued pursuant to this section for which a criminal penalty is not prescribed by state law shall constitute a misdemeanor and any person found guilty thereof shall be subject to a maximum penalty of \$1,000 or 90 days in jail, or by both such fine and imprisonment for each such day that a violation occurs or continues to occur.
- (6) Criminal. Any willful violation of the provisions of this chapter is deemed a misdemeanor unless a more exacting charge is allowed by law.

Section 14. Amendment of Section 13.10.520 BMC (Enforcement - Penalties). Section 13.10.520 of the Burien Municipal Code is hereby amended to read as follows:

13.10.520 Enforcement – penalties.

Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation and for all costs of inspection and sampling in the event the violation constitutes an illicit discharge. If the city repairs or replaces the damaged property, the actual cost to the city for such repair or replacement shall be assessed against the responsible party and shall be due and payable within ten days of the date of written notice of the same. Delinquent bills may be collected by a civil action in the Burien Municipal Court or as otherwise allowed by law. If the City obtains judgment, it shall also be entitled to reimbursement for court costs and reasonable attorney's fees expended in the litigation.

(A) Monetary Penalty. The amount of the monetary penalty per day or portion thereof for each violation of this chapter is as follows:

- (1) Except as may be otherwise set forth herein, the monetary penalty assessed shall not exceed \$1,000 per day for each such day that a violation occurs or continues to occur. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil infraction is directed. Any monetary penalty assessed must be paid to the City Clerk within seven calendar days from the date of service of the notice of civil infraction or, if an appeal was filed pursuant to Section 13.10.510(5)(e), within seven calendar days of the Hearing Examiner's decision.
- (2) The City Attorney, on behalf of the city, is authorized to collect the monetary penalty by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate accrual of additional per diem monetary penalties so long as the violation continues.
- (3) In the event of failure to appear at a hearing as provided in Section 13.10.510(5)(e), the Hearing Examiner shall assess the monetary penalty prescribed and a penalty of twenty-five dollars.
- (4) In the event of a conflict between this chapter and any other provision of this code of city ordinances providing for a civil penalty, this chapter shall control.

Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the Director of Public Works.

Section 15. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 16. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE ____ DAY OF _____, 2010, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS ____ DAY OF _____, 2010.

CITY OF BURIEN

Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

Monica Lusk, City Clerk

Approved as to form:

Chris Bacha
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk: [February 8, 2010](#)
Passed by the City Council: [February 8, 2010](#)
Ordinance No.: [534](#)
Date of Publication: [February 11, 2010](#)